

HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE G. V. SEETHAPATHY

WRIT PETITION No. 12306 OF 2006

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Between:

Smt. Jaya Karan and another

.....Petitioners

And

The Municipal Corporation of Hyderabad,
Represented by its Commissioner, Tankbund,
Hyderabad and another

.....Respondents

:: ORDER ::

Counsel for the Petitioners : Ms. Mamtha Singh
for
Sri Brahmadandi Ramesh

Counsel for Respondents : Sri G. Rama Rao

Dated: 25-08-2006

Per G.S. SINGHVI, CJ

In this petition, the petitioners have prayed for quashing notice dated 17-06-2006 issued by Municipal Corporation, Hyderabad (for short, 'the Corporation') under Section 636 of the Hyderabad Municipal Corporation Act, 1955 (for short 'the 1955 Act') for removing the unauthorized construction made in the cellar of the premises bearing No.3-5-784/15/F situated in Kingkoti, Hyderabad.

M/s.Kushal Apartments, a partnership firm, purchased property bearing Municipal No.3-5-784/15/1 and portions of properties bearing Municipal Nos.3-5-784/17 and 3-5-784/16 situated at King Kothi Road, Hyderabad by separate sale deeds dated 3-8-1978, 12-10-1979 and 29-12-1979. After getting the building plan for construction of multi-storeyed building sanctioned, M/s.Kushal Apartments sold different portions of the proposed building to various persons. Petitioner No.1, Smt. Jaya Karan purchased a portion of the property (flat) vide registered sale deed dated 3-11-1981. In the year, 1985, petitioner No.1 rented out the premises to petitioner No.2 for running a barber shop and since then the latter is doing business under the name and style 'Oberoi Gents Beauty Parlour'. The grievance of the petitioners is that without issuing any notice and without hearing them, the respondent Corporation has straight away issued notice of demolition without even considering the fact that the location of the shop at its present site does not hinder free flow of traffic.

Learned counsel for the petitioners argued that petitioner No.1 had purchased the disputed premises from the owner under a bonafide impression that the construction has been raised in accordance with the sanctioned plan and in conformity with the provisions of the 1955 Act and the rules framed thereunder and, therefore, she and her tenant (petitioner No.2) cannot be accused of having raised unauthorized construction. She invited our attention to sale deed dated 03-11-1981

executed by M/s. Kushal Apartments in favour of petitioner No.1 to substantiate her assertion regarding purchase of property by her client. She further argued that even if some illegal construction has been made or the purchased property has been put to a use not sanctioned by law, action under Section 636 of the 1955 Act could not have been taken without complying with the rules of natural justice.

Sri G.Rama Rao, learned counsel for the respondents submitted that the construction in question has been made in a cellar which is meant for parking and, therefore, the Corporation has not committed any illegality by initiating action for demolition of the illegal structure.

We have given serious thought to the respective submissions and are of the view that ends of justice would be adequately met if the petitioners are allowed an opportunity to make representation before the concerned authority of the Corporation to show that the premises in their possession does not fall within the ambit of unauthorized construction or that there has been no misuse of the premises. Sri G.Rama Rao, learned counsel for the Corporation gave out that representation can be made by the petitioners to Chief City Planner of the Corporation.

In view of the above, , the writ petition is disposed of with the following directions:

- 1) Within seven days from today, the petitioners may make representation to Chief City Planner, Municipal Corporation, Hyderabad and produce documents to show that the premises in dispute does not fall within the ambit of unauthorized construction made by the erstwhile owner of the building viz., Kushal Apartments and that the premises purchased by petitioner No.1 has not been misused. It will also be open to the petitioners to raise all legally

permissible objections against notice dated 17-6-2006.

- 2) Within two weeks of the submission of representation, the Chief City Planner shall, after hearing the petitioners or their representatives and considering the documents produced by them, pass appropriate order on the nature of construction and use of the premises.
- 3) If the officer concerned comes to the conclusion that the construction in dispute has been made in violation of the sanctioned plan or that the same has been put to a use other than the one sanctioned by law, then he may pass appropriate order for cessation of the use or demolition of the unauthorized structure. Such order shall not be given effect to for a period of seven days and within that time, the petitioners shall be free to avail appropriate legal remedy including the one by filing fresh writ petition.

As a sequel to disposal of the writ petition, WPMP No.15301 of 2006 filed by the petitioners for interim relief is disposed of as infructuous.

Since the action impugned in the writ petition was initiated by the Corporation in furtherance of directions given by the Division Bench, we direct that future litigation by the petitioners and similarly situated persons against the action taken by Municipal Corporation, Hyderabad shall be listed before the Division Bench as per roaster.

G.S.SINGHVI, CJ

G.V.SEETHAPATHY, J

25-08-2006
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